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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

No. 205

In re CLYDE WILSON SUMMERS,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS AND FOR WRIT OF
MANDAMUS TO COMPEL SAID COURT TO CERTIFY A
TRANSCRIPT OF ITS RECORD HEREIN

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*To the Honorable Chief Justice of the United States and the
Associate Justices of the Supreme Court of the
United States:*

Petitioner, Clyde Wilson Summers respectfully prays for a writ of certiorari to the Supreme Court of the State of Illinois to review a determination of that court made on March 22, 1944, denying a petition filed February 18, 1944, for reconsideration of the Court's denial on September 20, 1943 of petitioner's petition filed August 2, 1943 for admission to the practice of law in the State of Illinois, and further prays for a writ of mandamus to said Court requiring it to certify and send to this Court a transcript of its record herein.

Statement of Matters Involved

Petitioner having completed the course of study of law at the University of Illinois took and passed the prescribed examination for candidates for admission to the bar of Illinois in June 1942, whereupon he filed on August 5, 1942 his application for admission to the bar. Subsequently petitioner appeared before the Committee on Character and Fitness of the Third Appellate District of Illinois, which refused to certify him to the Board of Law Examiners as qualified for admission to the bar, although in all other respects he was so qualified, for the sole reason that said committee regarded him as unfit to practice law because he is a conscientious objector to war. He told the committee that he could not participate in war because of his conscientious scruples, and that he was classified in Class IV-E as a conscientious objector by his draft board.

On August 2, 1943, petitioner filed with the Supreme Court of Illinois a petition for admission to the practice of law on the ground that he was entitled to admission to the practice of law, having fulfilled the requirements therefor, and was unlawfully and improperly denied such admission solely because he is a conscientious objector.

The question so presented was considered by the Court informally, was not treated as a matter of record and petitioner did not have an opportunity to be heard. Petitioner was informed by letter from the Chief Justice of said Court that the petition was denied September 20, 1943. On February 18, 1944, petitioner filed a petition for reconsideration of the Court's previous action, which was again considered informally and without petitioner having an opportunity to be heard, and he was informed by letter from

the Chief Justice dated March 22, 1944, that the petition for reconsideration was denied.

The time within which to file a petition for certiorari was, on June 22, 1944, extended for a period of seven days, namely, to June 29, 1944, by order of Justice FRANKFURTER.

Jurisdiction

The jurisdiction of this Court is invoked under Section 237b of the Judicial Code (28 U. S. C. Sec. 344b).

Question Presented

Was the petitioner deprived of his liberty and property without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution in having been denied admission to the practice of law, although otherwise qualified, because of his conscientious scruples against participation in war?

Constitutional Provisions Involved

United States Constitution—Amendment XIV, Sec. 1.

“ . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Reasons for Allowance of Writ

This Court has never decided the question whether denial of admission to the practice of law may be a deprivation of liberty and property without due process of law and a denial of the equal protection of the laws under the Fourteenth Amendment. We have found no case involving admission to the practice of law decided by this Court since 1873, when this Court held in *Bradwell v. Illinois*, 16 Wall. 136, that the denial to a woman of admission to the bar because of her sex would not be disturbed as denying her the privileges and immunities belonging to citizens of the United States. A very different question from the one here presented. The application of the Fourteenth Amendment to cover deprivation of religious and other liberty and property without due process of law, and denial of the equal protection of the laws, had not been developed when this case was decided.*

Not only has this court never decided whether the due process and equal protection clauses of the Fourteenth Amendment extend to the denial of admission to the bar, but the denial of this privilege to petitioner was made under such circumstances that the case assumes particular importance at this time. The petitioner was refused admission to the bar of Illinois on the sole ground that he is a conscientious objector to war, despite the fact that the right of conscientious objectors to freedom of religion and protection in their belief is recognized by the Selective Training and Service Act of 1940,** and despite the fact that

* The Slaughterhouse Cases 16 Wall. 36 were decided the day before *Bradwell v. Illinois*, *supra*.

** Sec. 5g.

conscientious objectors have long been regarded as valuable and worthy citizens entitled to enjoy all the rights and privileges of citizens which the Fourteenth Amendment was designed to protect. (See the dissenting opinion of Chief Justice HUGHES in *U. S. v. Macintosh*, 283 U. S. 605, 639.)

The withholding from an American citizen of liberty secured by the Fourteenth Amendment, liberty which the nation is now fighting to secure, based on a narrow view which springs from intolerance of his religious beliefs, is so abhorrent to the constitution and indeed to our sense of justice, that this Court should be quick to intervene and should hear this case.

Necessity for Issuance of a Writ of Mandamus

Petitioner's attorney, immediately upon being instructed to file a petition for a writ of certiorari herein, telephoned to the office of the Clerk of the Supreme Court of Illinois and was told that the Clerk would certify to this Court a transcript of the record consisting of the petition, petition for rehearing, and two letters from the Chief Justice of the Illinois Supreme Court to the petitioner informing him that said petitions had been respectively denied. Type-written copies of said documents were immediately sent to the Clerk and his fees for certification paid. On June 27, 1944 in response to his inquiry, petitioner's attorney received from the Clerk of the Supreme Court of Illinois, Edward F. Cullinane, the following telegram:

"WESTERN UNION"

1944 Jun 28 PM 12 46

AB82

NG101 DL Collect=BK Springfield Ill.28 1042A

Julien Cornell=

Attorney at Law 15 William St NYK=

D 10

In re Summers. I cannot certify record as petition and motion to review et cetera were not filed and documents are not in my custody. Such petitions are treated informally by this Court and all such files are retained in courts file to which I do not have access no formal order was entered on Summers petition through this office letter follows=

Edward F Cullinane."

Petitioner therefore submits with this petition a transcript of the record which is not certified as required by Rule 38 of the Rules of this Court.

Petitioner is informed and believes that the record herein is in the possession of one or more of the justices of the Supreme Court of Illinois and that the orders of that court denying the petitions herein are entered in a docket of that court, although said record and docket may not be under the control of the Clerk.

Petitioner respectfully urges that the certification of papers is a function of the court, that the Clerk is merely the agent of the court in exercising that function, and can not lawfully refuse to certify a record required by this court merely because the Justices and not the Clerk have custody thereof.

Because of the refusal of the Clerk of the Supreme Court of Illinois to certify the record in this cause, petitioner prays for a writ of mandamus in aid of the appel-

late jurisdiction of this Court to the Supreme Court of Illinois requiring it to certify the record.

WHEREFORE petition prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the Supreme Court of Illinois commanding that Court to certify and send to this Court this cause and a complete transcript of the record and all proceedings had herein to the end that this cause may be reviewed by this Court, that the determination of the Supreme Court of Illinois be reversed, and that a writ of mandamus may issue out of and under the seal of this Court directed to the Supreme Court of Illinois commanding that Court to certify and send to this Court a complete transcript of the record herein in aid of the determination of this Court upon petitioner's application for a writ of certiorari, and that petitioner have such other and further relief in the premises as this Court may deem proper.

Dated, June 27, 1944.

CLYDE WILSON SUMMERS,
Petitioner.

JULIEN CORNELL,
Attorney for Petitioner,
15 William Street
New York, N. Y.